

## 35A Am. Jur. 2d Federal Tort Claims Act § 98

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### Federal Tort Claims Act

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; and John A. Gebauer, J.D.


#### IV. Effect of Doctrine of Respondeat Superior

##### A. In General

## § 98. Doctrine of respondeat superior, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [United States](#)  861, 862

### A.L.R. Library

[Federal Tort Claims Act: When is government officer or employee "acting within the scope of his office or employment" for purpose of determining government liability under 28 USC sec. 1346\(b\), 6 A.L.R. Fed. 373](#)

### Forms

[Am. Jur. Pleading and Practice Forms, Federal Tort Claims Act § 82](#) (Answer—Defense—Lack of subject matter jurisdiction—Employee not acting within scope of employment)

### Primary Authority

[Federal Procedural Forms § 63:120](#) (Defense in answer—Lack of subject matter jurisdiction—Employee not acting within scope of employment [28 U.S.C.A. §§ 1346(b), 2671 et seq.; Fed. R. Civ. P. 8(c), 12(b)])

Under the Federal Tort Claims Act (FTCA), the United States is to be liable for tort claims in the same manner and to the same extent as a private individual under like circumstances.<sup>1</sup> Likewise, under the FTCA, federal courts have jurisdiction

over actions for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of their office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.<sup>2</sup> The Federal Tort Claims Act in substance adopts respondeat superior liability for the United States.<sup>3</sup> Tort plaintiffs may bring against the federal government the same kind of ordinary tort action that plaintiffs often bring against private employers, namely an action claiming that the employee wrongfully hurt the plaintiff and that the employer is liable under the doctrine of respondeat superior.<sup>4</sup>

The FTCA expressly declares that “acting within the scope of his office or employment in the case of a member of the military or naval forces of the United States, or a member of the National Guard, means acting in the line of duty.”<sup>5</sup> The term “acting in line of duty,” as used in the FTCA, merely invokes the state law of respondeat superior, notwithstanding that the term has a military sound and, apparently a different meaning when used in connection with benefit claims of military personnel against the government.<sup>6</sup>

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#### Footnotes

<sup>1</sup> § 2.

<sup>2</sup> 28 U.S.C.A. § 1346(b)(1).

<sup>3</sup> *Ouellette v. Beaupre*, 977 F.3d 127 (1st Cir. 2020).

<sup>4</sup> *Dumansky v. U.S.*, 486 F. Supp. 1078, 29 Fed. R. Serv. 2d 279 (D.N.J. 1980).  
Postal Service officials’ motion to dismiss or for a summary judgment was been granted in a suit by a letter carrier alleging tortious interference with employment and defamation, where the officials investigated the carrier’s disability claim, scheduled independent examinations, and requested that the carrier return to work, since such duties were within the scope of the officials’ employment and the law creates respondeat superior immunity for federal employees. *Meyer v. Runyon*, 869 F. Supp. 70, 7 A.D.D. 1039 (D. Mass. 1994).

<sup>5</sup> 28 U.S.C.A. § 2671.

<sup>6</sup> *McCall v. U.S.*, 338 F.2d 589 (9th Cir. 1964).